

**HB 640 - "Prohibiting Adoption of Land Use Policies without Due Process"
and "Prohibiting Political Subdivision from Participating in a Council of
Government"**

Written Testimony in Opposition

Tara DePuy, Land Use Attorney, MACo/JPIA

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House Local Government Committee

Purpose of HB 640: While HB 640 will be presented as a private property rights bill, HB 640 is a thinly disguised anti-Agenda 21 bill now aimed solely at counties and cities. The language in HB 640 regarding "council of government" and "property rights" closely mirror the definition for these terms in HB 583, an anti- Agenda 21 bill which applied to the State of Montana and counties and cities. HB 583 narrowly passed out of House Judiciary on an 11-10 vote and was defeated in the House on Second Reading, 41-59. HB 640 in Section 3 appropriates \$100 to the Department of Commerce to "notify political subdivisions" regarding this bill, a bill with an immediate effective date. The underfunded appropriation is an attempt to bring an anti-Agenda 21 bill back to the Montana Legislature when the Legislature has already spoken. There is no need for Section 1 in this bill if this was truly a private property rights bill other than to further the "agenda" of those opposed to Agenda 21.

Definition of "Councils of Governments":

HB 583: "Councils of governments" means regional bodies, not authorized by Montana law, that are defined to serve an area of several counties and that draw their membership from the governmental bodies in their area. They exist through the United States and are also referred to as regional councils, regional commissions, regional planning commissions, planning district commissions or development districts.

HB 640: As used in this section, "council of government" means a regional body, not authorized in Montana law, that (a) is defined to serve an area of several counties; (b) draws its membership from the governmental bodies in its area; and (c) exercises legal authority normally conducted by individual government bodies.

Definition of "Property Rights":

HB 583: "Property" means not just property that is owned or possessed but the right of use, enjoyment, and disposal of property. The substantial value of the property lies in its use. If the right of use of the property is denied, the value of the property is annihilated and ownership has become a barren right.

HB 640: "Property rights" means an owner's rights to possess, use and dispose of property.

Problems with HB 640:

1. WHEREAS Clauses. The first two Whereas Clauses reference "commitments" that do not exist in written form or state law.

2. Section 1: Local control of constitutional authority. This section appears to violate several sections of the Montana Constitution. In particular, Article XI, Section 7. Intergovernmental Cooperation which authorizes local government to cooperate in the exercise of any function, power or responsibility, share services and transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state or the United States; and Article II, Section 6. Freedom of Assembly as it relates to city and county officials. Elected officials do not give up their constitutional rights when they sign an oath of office.

3. Section 2. Restriction of property rights – due process requirement. The terminology used in this section is vague and unenforceable and the constitutionality of the language is suspect. The pivotal 1922 United States Supreme Court land use takings case, *Pennsylvania Coal*, clearly states that some private property rights may be restricted by the State in legitimate exercise of its police powers. For example, the State and its political subdivisions have the right to limit development in floodplains under police powers to protect public health and safety. Under HB 640 a private party could claim that floodplain regulations are a takings of their right to possess, use and dispose of property because of the vagueness of the term "without due process of law" in HB 640. MACo joins in the testimony of the Department of Commerce, Community Technical Assistance Program on the constitutional infirmities of this section.

4. Fiscal Note. No fiscal note exists for this bill. A fiscal note should be requested. The cost to counties and cities from frivolous litigation under HB 640 will be substantial.

5. Private property rights are not protected when the language of a bill is vague, unenforceable and constitutionally suspect.